U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

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File: WAC 97 253 50605 Office: California Service Center Date:

AUG 9 2000

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal, and affirmed that decision following the petitioner's motion to reconsider. The matter is now before the Associate Commissioner on a second motion. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

Counsel refers to the new motion as a motion to reopen. The Service's regulation at 8 C.F.R. 103.5(a)(2) states "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." No new evidence accompanies the motion.

8 C.F.R. 103.5(a)(3) states, in pertinent part:

> A motion for reconsideration must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy . . . [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Because the motion consists entirely of arguments alleging error in previous decisions, the petitioner's motion constitutes a motion to reconsider rather than a motion to reopen.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

The statutory and regulatory language pertinent to this petition have appeared in previous decisions and need not be repeated here. It bears mentioning, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The petitioner in this matter seeks classification as an alien of extraordinary ability as a martial arts coach. The regulation at 8 C.F.R. 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, determined that the petitioner had satisfied only one criterion (judging the work of others) as a

martial arts coach, and that the petitioner's previous career as a competitive martial artist could not demonstrate eligibility because the petitioner does not seek to compete, but rather to coach other martial artists.

Counsel, on motion, attempts once again to show that the petitioner has satisfied the following criterion:

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

In the previous motion, counsel argued that the petitioner had also won significant awards, and that the petitioner had submitted comparable evidence in the form of "letters from top experts in martial arts." The AAO affirmed the earlier decision, denying the petition.

On motion for the second time, counsel observes that the petitioner won awards as a competitive athlete and asserts "[i]t is common sense that good coaches come from good athletes." While experience in a given sport certainly yields knowledge which is of use to a coach, it remains that the petitioner has not won any significant awards as a martial arts coach, nor has he shown that his pupils have won a disproportionate number of awards as competitors. Success as an athlete does not automatically translate into national or international acclaim as a coach, and it is this standard which the petitioner must reach. It cannot suffice to state that, because the petitioner was so successful as a competitor, he is bound to eventually have similar success as a coach. Furthermore, the regulation requires awards in the field of endeavor. Surely coaching is a significantly different endeavor than actual participation in competition.

Counsel argues, on motion, that the petitioner has satisfied a previously unclaimed criterion:

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

Counsel states that the "[p]etitioner was Head Coach of the martial arts national team in Surinam Republic [sic]." The evidence in the record which comes closest to corroborating this claim is a letter indicating that the petitioner was appointed "the head Coach of the [redacted]. There is no indication that Suriname had any official "national team," or that the petitioner was that team's head coach. The record contains little information about the [redacted] and therefore the available evidence does not demonstrate that the association has a

distinguished reputation compared to other martial arts organizations.

Counsel claims that the petitioner has satisfied one further criterion:

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

Counsel here cites various witness letters which accompanied the initial petition. The AAO discussed these letters in its first decision of June 24, 1998, and counsel has demonstrated no flaw or omission in that analysis. Therefore, it would be redundant to revisit those letters at this time.

Counsel concludes this motion by asserting "[t]he AAO decision has failed to explain why the evidence submitted is not sufficient to prove Petitioner's outstanding achievement in martial arts." The initial AAO decision discussed the evidence at length. The burden is on the petitioner to explain why the evidence does establish eligibility. Until that burden is met, the presumption must be toward ineligibility. The evidence of record has received due consideration, and while it shows that the petitioner has enjoyed success as a competitive athlete in his own right, it does not indicate that he is one of the best-known martial arts coaches at a national or international level.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

ORDER: The Associate Commissioner's decision of September 27, 1999 is affirmed. The petition is denied.